

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WHITNEY NICOLE SMITH,

Plaintiff,

v.

ST. LOUIS COUNTY JUSTICE CENTER,

Defendant.

Case No. 4:22 CV 744 RWS

MEMORANDUM AND ORDER

This matter is before the Court on the post-dismissal filing of Plaintiff Whitney Nicole Smith's amended complaint. [ECF No. 5]. I will vacate the order of dismissal in this action.

Smith, a pretrial detainee, filed the instant action against the St. Louis County Justice Center on July 12, 2022. On July 13, 2022, the Court ordered Smith to amend her complaint on a Court form and either pay the \$402 filing fee or file a motion to proceed in forma pauperis. She was ordered to do so within twenty-one (21) days of the Court's order, or no later than August 3, 2022.

On August 8, 2022, after Smith failed to file an amended complaint and a motion to proceed in forma pauperis or pay the full filing fee in a timely manner, the Court dismissed this action pursuant to Federal Rule of Civil Procedure 41(b). However, on August 16, 2022, the Court received a filing from Smith titled "Amended Complaint." Attached to the end of the amended complaint is a form motion for moving to proceed in forma pauperis. The declaration portion of the amended complaint states that Smith placed the amended complaint in the mail at the Justice Center on July 18, 2022.

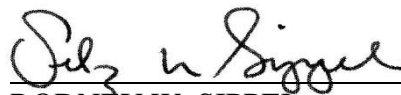
The Court finds that application of the prison mailbox rule is appropriate in this instance, such that Smith's amended complaint should be considered filed at the time she delivered it to the prison authorities for forwarding to the Court. *See Houston v. Lack*, 487 U.S. 266, 276 (1988); *see also Sulik v. Taney Cnty, Mo.*, 316 F.3d 813, 814 (8th Cir. 2003), *abrogated on other grounds by Sulik v. Taney Cnty., Mo.*, 393 F.3d 765 (8th Cir. 2005). As such, I will vacate the order of dismissal entered on August 8, 2022, and refer Smith's amended complaint for review pursuant to 28 U.S.C. § 1915 for frivolousness, maliciousness and failure to state a claim.

Accordingly,

IT IS HEREBY ORDERED that the order of dismissal entered on August 8, 2022, [ECF No. 3], is **VACATED**.

IT IS FURTHER ORDERED that the Clerk shall detach Plaintiff Whitney Nicole Smith's motion to proceed in forma pauperis from the amended complaint, [ECF No. 5], and file it as a separate motion.

IT IS FURTHER ORDERED that Smith's amended complaint shall be subject to review under 28 U.S.C. § 1915 for frivolousness, maliciousness and failure to state a claim.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 18th day of August, 2022.